

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COINBASE, INC. and
COINBASE GLOBAL, INC.

Defendants.

23 Civ. 04738 (KPF)

MEMO ENDORSED

MOTION FOR LEAVE TO FILE BRIEF
OF *AMICUS CURIAE* NORTH AMERICAN SECURITIES
ADMINISTRATORS ASSOCIATION, INC. IN SUPPORT OF THE
SECURITIES AND EXCHANGE COMMISSION

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Counsel for Amicus Curiae

The North American Securities Administrators Association, Inc. (“NASAA”) respectfully moves for leave to file the accompanying brief – attached as Exhibit A and filed previously as docket item 77 – in support of Plaintiff as *amicus curiae*. NASAA is the non-profit association of state, provincial, and territorial securities regulators in the United States, Canada, and Mexico, and NASAA’s U.S. members are responsible for regulating securities transactions and professionals under state securities laws.

NASAA’s U.S. members have a strong interest in the outcome of this case because most states have substantially adopted the definition of “investment contract” articulated in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). State securities regulators have relied on that framework to protect investors from fraud and abuse involving the offer and sale of digital asset securities, including a recent action by state securities regulators in ten states alleging that Coinbase violated state securities laws by offering and selling its staking program as an unregistered security. Thus, it is important that the *Howey* test be construed and applied properly to fulfill the remedial and prophylactic purposes of the securities laws.

Amicus briefs “should normally be allowed when . . . the *amicus* has an interest in some other case that may be affected by the decision in the present case . . . or when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Auto Club of N.Y., Inc. v. The Port Authority of N.Y. and N.J.*, No. 11 Civ. 6746, 2011 WL 5865296, at *1-2 (S.D.N.Y. Nov. 22, 2011) (citations and quotations omitted). The accompanying brief offers NASAA’s unique perspective as to how state securities regulators have acted to protect investors from fraud and abuse involving the offer and sale of digital asset securities, and why state securities regulators have taken positions consistent with Plaintiff that

certain digital assets are investment contracts, per *Howey*. NASAA therefore respectfully asks the Court to grant its motion.

Dated: October 26, 2023

Respectfully submitted

By: /s/ Vincente L. Martinez
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed on October 26, 2023, with the Clerk of the Court by using the CM/ECF system, which will effect electronic service on all parties and attorneys registered to receive notifications via the CM/ECF system.

A courtesy copy is being sent to Chambers by United States mail.

Dated: October 26, 2023

By: /s/ Vincente L. Martinez
Vincente L. Martinez

It is the Court's understanding that this *amicus* brief was previously filed on October 10, 2023, (Dkt. #77), but that a filing error occurred. The *amicus* brief has been re-filed to correct any deficiencies. Application GRANTED. In light of the late submission, Defendants are permitted, but not required, to file a response of no more than three (3) pages addressing the contents of this *amicus* brief on or before **November 3, 2023**.

The Court of the Clerk is directed to terminate the pending motion at docket number 87.

Dated: October 27, 2023
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE